

FEDERAL NORTHERN DISTRICT COURT
FOR CALIFORNIA

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NOV 15 2007 *kgm*
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

People of the State of California

Respondent

v

BARTH D.CAPELA

Petitioner

Motion for stay of Judgement
pending exhaustion in the
lower court.

case no. FF302986

cit.no. H028273

cit.no. S143236

FILED

C-07-4734-SB NOV 15 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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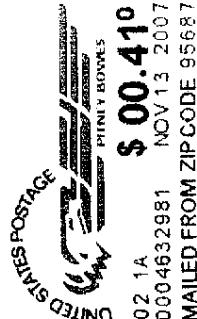
To the Northern District Court San Jose Div.

Petitioner respectfully applies to this Court for a stay
of Judgement during the pendency of Habeas Corpus filed
in the Superior Court of Santa Clara county, and or State
remedies have been exhausted.

Due to a recent discovery of a sentencing error that my State appointed
Appellate Attorney failed to address a Habeas Corpus is being filed in the
lower Court to remedy the error. This is a plain error that should be resolved
in the Superior Court. Three prop 8 priors were used in this case for the
purpose of enhancement five years each. The oldest of those priors dates back
to May 19, 1982 which predates the effective date Proposition 8 was voted into
law. In PEOPLE V. SMITH a California Supreme Court case (Crim.no. 22273.Aug.8, 1983)
it clearly states enhancements can not be used before this date. I recently
obtained my transcripts and discovered this error. I declare under penalty of
perjury the forgoing is true and correct and pray this Court will allow me
a stay until this issue is resolved.

Todays Date Nov. 11, 2007

BARTH CAPELA #V-58262
BARTH D.CAPELA
CSP Solano P.O. 4000



CSP SOLANO
STATE PRISON

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Court of California
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